

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RITA WEISSHAAR; et al.,
Plaintiffs,

v.

SIERRA PACIFIC POWER COMPANY,
Defendant.

3:11-cv-0360-LRH-WGC

ORDER

Before the court are defendant Sierra Pacific Power Company's ("Sierra Pacific") motion to dismiss (Doc. #13¹) and motion to strike request for attorney's fees (Doc. #14).

Also before the court is plaintiffs' motion for leave to file an amended complaint. Doc. #21.

I. Facts and Procedural History

This is an action brought by plaintiffs, employees of Sierra Pacific, for alleged violations of the collective bargaining agreement between Sierra Pacific and its employees. On May 19, 2011, plaintiffs filed their initial complaint alleging two causes of action: (1) violation of the collective bargaining agreement; and (2) breach of contract. Doc. #1. In response, Sierra Pacific filed the present motion to dismiss the breach of contract claim (Doc. #13) and motion to strike plaintiffs' request for attorney's fees (Doc. #14). Thereafter, plaintiffs filed their motion for leave to file an

¹ Relates to the court's docket number.

1 amended complaint. Doc. #21.

2 **II. Discussion**

3 **A. Motion to Amend (Doc. #21)**

4 A party may amend its pleadings after a responsive pleading has been filed by leave of
5 court. FED. R. CIV. P. 15(a)(2). Leave of court to amend should be freely given when justice so
6 requires and when there is no undue delay, bad faith, or dilatory motive on the part of the moving
7 party. *See Wright v. Incline Village General Imp. Dist.*, 597 F.Supp.2d 1191 (D. Nev. 2009); *DCD*
8 *Programs, LTD v. Leighton*, 883 F.2d 183 (9th Cir. 1987).

9 Here, plaintiffs request leave to amend their complaint to dismiss their breach of contract
10 claim and further flesh out the allegations relating to their violation of the collective bargaining
11 agreement claim. *See* Doc. #21. A copy of the proposed amended complaint is attached as
12 Exhibit A to plaintiffs' declaration in support of the motion for leave to amend accordance with
13 LR 15-1. Doc. #22, Exhibit A.

14 The court finds that there is no undue delay, bad faith, or dilatory motive on behalf of
15 plaintiffs in requesting leave to amend their complaint. Further, the court finds that the matter is
16 early in litigation and that defendants would not be prejudiced by allowing amendment.
17 Accordingly, plaintiffs shall be granted leave to amend their complaint.

18 **B. Motion to Dismiss (Doc. #13)**

19 The filing of an amended complaint supersedes the original complaint in its entirety.
20 Accordingly, Sierra Pacific's motion to dismiss the complaint is now moot. Because the court is
21 granting plaintiffs' motion for leave, the court shall deny the motion to dismiss without prejudice to
22 allow Sierra Pacific an opportunity to respond to the amended complaint.

23 **C. Motion to Strike (Doc. #14)**

24 Sierra Pacific also seeks to strike plaintiffs' demand for attorney's fees if they are successful
25 in this action. The court has reviewed the document and pleadings on file in this matter and finds
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1 that it is too early in litigation to determine whether or not plaintiffs would be entitled to attorney's
2 fees in this action. Therefore, the court shall also deny the motion to strike without prejudice.

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4 IT IS THEREFORE ORDERED that plaintiffs' motion for leave to amend (Doc. #21) is
5 GRANTED. Plaintiffs shall have ten (10) days to file the proposed amended complaint attached as
6 Exhibit A to the declaration in support of plaintiffs' motion for leave to amend (Doc. #22,
7 Exhibit A).

8 IT IS FURTHER ORDERED that defendant's motion to dismiss (Doc. #13) and motion to
9 strike (Doc. #14) are DENIED without prejudice.

10 IT IS SO ORDERED.

11 DATED this 19th day of December, 2011.



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14 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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